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3 **UNITED STATES DISTRICT COURT**  
4 **DISTRICT OF NEVADA**

5 PHILLIP SMITH,

6 Petitioner,

7 vs.

8 F.N.U. COLLINS, *et al.*,

9 Respondents.  
10

Case No. 2:14-cv-00483-JAD-NJK

**ORDER**

11 Petitioner Phillip Smith, through counsel, has filed a second amended petition for writ of habeas  
12 corpus, pursuant to 28 U.S.C. § 2254 (Doc. 15). The petition shall be served upon the respondents.

13 A petition for federal habeas corpus should include all claims for relief of which petitioner is  
14 aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking  
15 federal habeas relief upon that claim. *See* 28 U.S.C. §2254(b) (successive petitions). If petitioner is  
16 aware of any claim not included in his petition, he should notify the court of that as soon as possible,  
17 perhaps by means of a motion to amend his petition to add the claim.

18 **IT THEREFORE IS ORDERED** that the Clerk shall **ELECTRONICALLY SERVE** the  
19 second amended petition (Doc. 15) upon the respondents.

20 **IT FURTHER IS ORDERED** that respondents shall file a response to the petition, including  
21 potentially by motion to dismiss, within **45 days** of service of the petition, with any requests for relief  
22 by petitioner by motion otherwise being subject to the normal briefing schedule under the local rules.

23 **Any response filed shall comply with the remaining provisions below, which are entered**  
24 **pursuant to Habeas Rule 4.**

25 **IT FURTHER IS ORDERED** that any procedural defenses raised by respondents in this case  
26 shall be raised together in a single consolidated motion to dismiss. In other words, the court does not  
27 wish to address any procedural defenses raised herein either in *seriatum* fashion in multiple successive  
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1 motions to dismiss or embedded in the answer. Procedural defenses omitted from such motion to  
2 dismiss will be subject to potential waiver. Respondents shall not file a response in this case that  
3 consolidates their procedural defenses, if any, with their response on the merits, except pursuant to 28  
4 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If respondents do seek  
5 dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do so within the single motion to  
6 dismiss **not** in the answer; and (b) they shall specifically direct their argument to the standard for  
7 dismissal under § 2254(b)(2) set forth in *Cassett v. Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In  
8 short, no procedural defenses, including exhaustion, shall be included with the merits in an answer.  
9 All procedural defenses, including exhaustion, instead must be raised by motion to dismiss.

10 **IT FURTHER IS ORDERED** that, in any answer filed on the merits, respondents shall  
11 specifically cite to and address the applicable state court written decision and state court record  
12 materials, if any, regarding each claim within the response as to that claim.

13 **IT FURTHER IS ORDERED** that petitioner shall have **30 days** from service of the answer,  
14 motion to dismiss, or other response to file a reply or opposition, with any other requests for relief by  
15 respondents by motion otherwise being subject to the normal briefing schedule under the local rules.

16 **IT FURTHER IS ORDERED** that any additional state court record exhibits filed herein by  
17 either petitioner or respondents shall be filed with a separate index of exhibits identifying the exhibits  
18 by number. The CM/ECF attachments that are filed further shall be identified by the number or  
19 numbers of the exhibits in the attachment. The hard copy of any additional state court record exhibits  
20 shall be forwarded – for this case – to the staff attorneys in **Reno**.

21 Dated: April 6, 2015.

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24 UNITED STATES DISTRICT JUDGE  
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